

FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JAMES J. THORPE, D.M.D., :

RESPONDENT. :

FINAL DECISION AND ORDER
Case LS9803301DEN

96 DEN 012

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

James J. Thorpe, D.M.D.
4574 Oak Spring Circle
Deforest, WI 53532

Wisconsin Dentistry Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James J. Thorpe (D.O.B. 1/10/54) is duly licensed in the state of Wisconsin as a dentist (license # 3140). This license was first granted on June 29, 1983. Respondent's most recent address on file with the Department of Regulation and Licensing is 4574 Oak Spring Circle, Deforest, WI 53532.

2. An action, LS9803301DEN is pending before the Dentistry Examining Board.

3. During the period between 1992 and 1996 Respondent utilized the controlled substance, Valium, in his dental surgical practice at Oakhill Correctional Facility. The sole documentation of the use of the Valium was on a form provided by Respondent's employer which contained boxes for patient name, type of procedure, date, and a check mark for "oral analgesic agent." No record was made of the name of the substance, dosage form, strength or quantity, as required by Wis. Stats, sec. 447.07(3)(L), sec. Phar 8.02(3) Wis. Adm. Code, Division of Health Directives 900.01 and 900.08 and Division of Health Procedure 9.07.

4. On 9/23/93 and 7/08/94, Respondent issued prescription orders 4402511 and 4403583 each for 30 tabs of 5 mg diazepam for "stock supply" for Oakhill Correctional Facility, although such a practice is prohibited by 21CFR 1306.04(b), Wis. Stats. sec. 447.07(3)(L) and sec. Phar 8.04(2) Wis. Adm. Code.

CONCLUSIONS OF LAW

5. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to sec. 447.07(3) Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5) Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED :

1. The attached Stipulation of the parties is accepted.

2. a. No later than March 31, 1999, Respondent shall certify to the Board the successful completion of the 44 hour course in Proper Prescribing of Controlled Dangerous Substances sponsored by the Forensic and Educational Consultants of Margate, N.J., or an equivalent course which has been approved in advance by the Board. Respondent shall be responsible for all costs associated with the completion of this educational requirement. Respondent shall arrange for the course sponsor to report directly to the Department Monitor at P.O. Box 8935, Madison, WI 53708-8935, telephone: (608) 267-7139. Respondent shall authorize release of all records of attendance and performance during the course to the Department Monitor and the Board.

b. Under the tutelage of an approved mentor, Respondent shall insure that the dental records system in use in his dental practice complies with the requirements of 21 CFR Chapter 1300, chapter Phar 8 Wis. Adm. Code, Division of Health Directives 900.01 and 900.08, and Division of Health Procedure 9.07. All of Respondent's records may be reviewed and discussed periodically with the mentor as the mentor shall determine. The review may include not only the adequacy of documentation but any other quality of care or related issue. The mentor shall agree to report any matter which may constitute a danger to the health, safety or welfare of patient or public, or any violation of law to the Board whenever it comes to the attention of the mentor.

No later than December 31, 1998, Respondent's progress and outcome in implementing appropriate dental record keeping practices shall be reported directly to the Department Monitor, who may discuss Respondent's progress with the mentor. The Department Monitor may be contacted at the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935; telephone (608) 267-7139.

Barbara A. Ripani, D.D.S., Dental Director, Bureau of Health Services, Department of Corrections, is an approved mentor.

If Respondent does not successfully complete or achieve the objectives of the educational and/or mentoring program set forth above, the matter shall be referred to the Board to determine whether additional discipline for the conduct set forth in the Findings of Fact shall be imposed.

3. Upon successful completion by Respondent of the requirements of paragraph 2 of this Order case LS9803301DEN (96 DEN 012) shall be closed without further proceedings.

4. Respondent shall pay the costs of investigation and prosecution of this action in the sum of \$ 400.00 to the Department of Regulation and Licensing within 30 days of the date of this Order

5. The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

6. This Order shall become effective upon the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

By: 

A Member of the Board

9-2-98
Date

STATE OF WISCONSIN

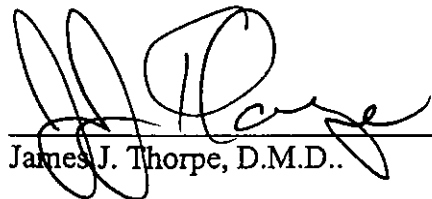
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
JAMES J. THORPE, D.M.D.,	:	96 DEN 012
	:	LS9803301DEN
RESPONDENT.	:	

It is hereby stipulated between James J. Thorpe, personally on his own behalf, and his attorney, Stephen E. Ehlke, and James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:


1. This Stipulation is entered in resolution of the pending proceeding LS9803301DEN concerning Respondent's license. The Stipulation and the attached proposed order shall be presented directly to the Dentistry Examining Board for its consideration for adoption.
2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Dentistry Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Board for the purpose of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.
7. The Division of Enforcement joins respondent in recommending the Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

 DMB

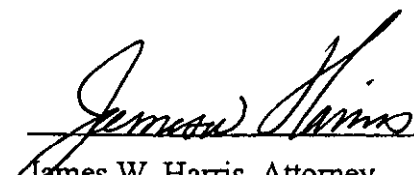
James J. Thorpe, D.M.D..

26 AUG 98
Date



Stephen E. Ehlke
Attorney for Respondent

8-26-98
Date



James W. Harris, Attorney
Division of Enforcement

August 28, 1998
Date

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On September 2, 1998, the Dentistry Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$400.00 Case #: LS9803301DEN

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$400.00

The costs and/or forfeitures are due: October 2, 1998

NAME: James J. Thorpe LICENSE NUMBER: 3140

STREET ADDRESS: 4574 Oak Spring Circle

CITY: Deforest STATE: WI ZIP CODE: 53532

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G:\BDLS\FM2145.DOC

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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

James J. Thorpe, D.M.D.,

AFFIDAVIT OF MAILING


Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On September 3, 1998, I served the Final Decision and Order dated September 2, 1998, and Guidelines for Payment of Costs and/or Forfeitures, LS9803301DEN, upon the Respondent James J. Thorpe's attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 736.

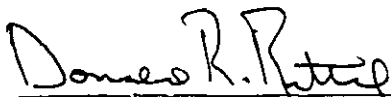
Stephen E. Ehlke, Attorney
44 E. Mifflin Street
P.O. Box 1807
Madison WI 53701-1807



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 3rd day of September, 1998.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: STEPHEN E EHLKE ATTY

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/3/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935